

In the United States Court of Federal Claims

ANDREW M. D'AVANZO, ET AL.,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

No. 00-776T

Filed: May 4, 2005

ORDER

Trial was completed on November 5, 2004, thus closing the factual record in this case. On November 8, 2004, the Court issued an Order setting the schedule for post-trial proceedings. At that time, the Court ordered the Government to file and serve post-trial Proposed Findings of Fact and Conclusions of Law by Friday, January 21, 2005. The Court ordered that plaintiffs file and serve post-trial Proposed Findings of Fact and Conclusions of Law by Friday, February 25, 2005. Closing argument was set for Wednesday, March 9, 2005. At plaintiffs' request, and with the Government's consent, the Court entered a revised scheduling order on January 19, 2005. At that time, the Government's post-trial brief was scheduled to be filed by February 4, 2005 and plaintiffs' brief was to be filed by March 9, 2005. Closing argument was to be held on April 22, 2005. The Government filed its post-trial brief on February 4, 2005. By oral motion, plaintiffs requested that they be permitted to file their post-trial brief on or about April 15, 2005. With consent of the Government, the Court granted plaintiffs' request. Plaintiffs filed their post-trial brief, by leave of Court, in two submissions, on April 20 and 21. Closing argument was held on April 22, 2005. At the conclusion of closing argument, the Court took the case under advisement.

On May 3, 2005, plaintiffs filed a Motion for Leave of Court to Submit Motions Below. Plaintiffs first request to "substitute the attached brief as a substitution for the prior submissions," filed on April 20 and 21. Plaintiffs contend that the amended brief is more complete and provides one bound document that is more convenient for use. Plaintiffs were given ample time to prepare their post-trial brief. They filed their brief more than two months after the Government filed its brief and more than five months after the conclusion of trial. Furthermore, the Court granted plaintiffs at least three enlargements of time within which to file their brief.

Plaintiffs' motion to substitute its brief, after three enlargements of time, and after closing argument, comes too late. Plaintiffs' motion to substitute is DENIED.

Plaintiffs next request "a continuation or subsequent hearing to address items not adequately presented previously." Plaintiffs were on notice as of January 19, 2005 that closing argument would be held on April 22, 2005. Plaintiffs had ample time to prepare for the argument. Plaintiffs contend that a death in the family "severely limited" Mr. D'Avanzo's preparation for closing argument. The Court is not unsympathetic to plaintiffs' loss. However, plaintiffs had five months from the end of trial within which to prepare for closing argument. That argument was held. The fact that Mr. D'Avanzo was unhappy with his performance in that hearing is not sufficient grounds for a rehearing. The Court is satisfied that it has before it all the facts and has heard all arguments relating to the trial and that plaintiffs have had more than ample opportunity to present their case. Plaintiffs' motion for "a continuation or subsequent hearing to address items not adequately presented previously" is DENIED.

During the closing argument, the Government objected to several exhibits attached by plaintiffs to their post-trial brief. The basis for the Government's objection was that the exhibits were not introduced at trial. The Court indicated that any exhibits not introduced at trial and objected to by the Government would not be considered by the Court in reaching a decision in this case. Plaintiffs take issue with that determination and request that the Court consider these exhibits. The Court stands by its ruling at the closing argument and reiterates that any exhibit not admitted at trial and objected to by defendant on that ground will not be considered by the Court. The factual record closed on November 5, 2004 at the conclusion of trial, and plaintiffs have made no showing that would entitle them to introduce additional evidence at this time.

The record in this case is closed. The Court will accept no further briefs in this matter. The Court has taken the case under advisement and will issue an opinion as promptly as practicable.

IT IS SO ORDERED.

GEORGE W. MILLER
Judge